

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

ARMSTRONG TELEPHONE COMPANY -
NORTHERN DIVISION.¹

Employer

and

Case 6-RC-11794

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 968,
AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Kim Siegert, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record in this case,³ the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by May 3, 2000.

³ Each party filed a brief in this matter which has been considered by the undersigned.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of a dispatcher, installer & repair persons, central office technicians, construction personnel, splicers and engineer⁴; excluding office clerical employees, and supervisors as defined in the Act. The parties are substantially in accord as to the scope and composition of the unit. The Employer contends, contrary to the Petitioner, however, that the petitioned-for unit is too limited in scope and seeks to include in the unit the position of customer service representative (CSR). The Petitioner does not seek to include the CSRs, and contends that they should be excluded as office clerical employees. In addition, the Petitioner seeks to exclude Norman Anderson, a part-time employee employed as a splicer. The Petitioner has indicated that it is unwilling to proceed to an election in any other unit found appropriate. There are fourteen employees in the petitioned-for unit, and nineteen employees in the unit the Employer contends is appropriate. There is no history of collective bargaining for any of the employees involved herein.

The Employer, a West Virginia corporation, with its sole facility located in Harrisville, West Virginia⁵, is engaged in the operation of a local telephone company, including the installation and repair of telephone systems. The Employer's telephone system provides service to approximately 4,700 customers located within a geographic area of approximately 704 square miles including parts of Richie, Wood, Doddridge, Jackson and Calhoun counties in West Virginia.

⁴ Neither party contends that the individual classified as an "engineer" is a professional employee within the meaning of Section 2(12) of the Act and the record does not reflect that this individual meets the criteria set forth in that section for a finding of professional status.

⁵ The Employer's corporate headquarters is located in Butler, Pennsylvania.

The Employer's General Manager (GM), Daniel Scoville, is responsible for overseeing all of the operations at this location. Scoville, who has held this position since 1993, is the facility's only salaried employee, and reports to corporate vice president James Matyas, who works out of the Butler, Pennsylvania headquarters. Scoville was the only witness who testified at the Hearing. He is assisted in performing his duties by Assistant General Manager (AGM) Ed Chancey.

Scoville has the limited power to hire, fire and discipline employees, subject to the approval of his superiors at the Butler, Pennsylvania headquarters. Chancey assists Scoville in the operation of the facility. All employees report to both of them. Although the record does not permit me to make a finding that Scoville and Chancey are supervisors within the meaning of Section 2(11) of the Act, both parties appear to concede that each possess sufficient authority to require their exclusion from the unit, and neither party seeks their inclusion.

The Employer employs one dispatcher, one engineer, six construction personnel, three Installation & Repair personnel (hereinafter I&R), two central office technicians (hereinafter CO techs), two splicers and four CSRs. The CSRs and dispatcher spend 100% of their time in the Employer's facility, the engineer spends about 60% of his time in the facility, one of the CO Techs spends about 90 – 100% of his time in the facility. The second CO Tech, who works approximately 70 miles from the facility, spends all of his time away from the facility, except when he must obtain supplies. The remaining personnel spend the bulk of their workdays away from the facility. One of the two splicers, Anderson, works part-time. His pay is comparable to other employees and he enjoys the same benefits. He primarily performs the same work as the full time splicer and also assists the engineer. The parties stipulated to the inclusion in the bargaining unit of the dispatcher, I&R, CO techs, construction, full-time splicer and engineer positions.

The Employer's business office in Harrisville consists of several rooms on a single floor. The only employees at the facility with their own separate offices are the General Manager, Assistant General Manager, and engineer. The CSRs work in what is labeled the "commercial

office" which contains separate workstations for the CSRs as well as a counter area where the CSRs greet the public. Other employees may come in to the Commercial office to answer technical questions from customers or to access the computers located in that office.

Employees can access all of the Employer's databases through each of the computers in the facility.⁶ The dispatcher's workstation sits on the other side of the wall from the CSRs. While the dispatcher's workstation is in a separate part of the facility, the room lacks a door, and is open to the commercial office. The in-house CO tech is stationed in an area near the Equipment Room, where he performs his work functions. All employees have access to the Conference Room/Lunch Room, which may be accessed through the dispatcher's work area. All employees other than the CSRs wear a company uniform, which consists of a blue and white striped shirt and blue pants. The CSRs do not wear a uniform.

All of the employees proposed to be included in the bargaining unit by either the Petitioner or by the Employer receive the same benefits. They are all hourly paid employees and receive overtime after 40 hours. Hourly employee pay rates range from a low of \$7.46 for one of the CSRs to a high of \$28.31. The three remaining CSRs are paid \$12.04 per hour. Only two employees, Gerry Law and Tim Spencer, are paid less than any of the CSRs. The employees are subject to the same company policies, procedures and disciplinary rules, and receive identical company handbooks.

A staff meeting, lasting approximately 15 to 20 minutes, is held each morning at the facility. Virtually all of the employees are expected to attend this meeting. The only exceptions are the second CO Tech, who works 70 miles from the facility, and the CSRs. The record reflects that the CSRs are not included in the daily meeting because the telephones may already be ringing and their work therefore will already have begun. Further, CSRs are not included in the meetings because the meetings deal with vehicle maintenance, daily service

⁶ There are 10 computer terminals in the facility including five in the commercial office, and one each at the GM, AGM, CO Tech, Dispatcher and Engineer workstations.

orders and crew assignments, which are beyond their scope of duties. The CSRs do not attend regular safety meetings, which are attended by all other employees and which deal with work safety issues.. They are included in monthly safety meetings, which involve office safety issues.

The CSRs are responsible for keeping records regarding time reporting, inventory and “continuing property records”. CSRs accept hand delivered bill payments. They interact with the public by answering telephone calls from customers concerning billing questions, service requests and changes, and other related matters. They input information provided by customers into the Employer's computer system, creating a service order. The CSRs perform all secretarial work at the facility. In order to maintain the inventory system and to determine what materials have been consumed, the CSRs receive written data from field employees and enter the data into the computer system. The CSRs may contact field employees to correct inconsistencies in the data. To perform this work the CSRs are expected to have good knowledge of the materials used by the other employees. Outside employees report their vehicle costs to the CSRs who then enter the information into the computer system. The CSRs may contact the field employees directly to correct inconsistencies in their travel reports.

The dispatcher gains access to the service order through his computer terminal. He reviews the service order and schedules the work to be done, dispatching personnel to provide the requested service. He is in constant communication with field personnel via radio, telephone and pager, tests customers telephone lines and works with the engineer to set up cable accounts.

Other unit personnel include construction personnel, who install outside facilities, including cable, strand, poles and pedestals. I&R personnel perform service orders and repair telephone problems. This work includes the installation of telephones, inside wiring, drops and other equipment including jacks, and the repair of customers' circuits. CO techs maintain the Employer's office switching apparatus, digital switching network, carrier systems and trunk carrier. This work is performed by one CO tech at the central office and by the second CO tech at outlying unmanned offices, which contain switching equipment. The cable splicers splice

outside plant cable, maintain the outside plant cable and install and repair the digital carrier system. The engineer draws up schematics for construction personnel, updates records, and is involved in scheduling construction projects on a weekly, monthly and yearly basis.

There is significant interchange among the personnel working outside the office. Construction, I&R and splicers perform each other's duties when needed. A CSR fills in for the dispatcher when he takes his one-week yearly vacation and for limited periods of time when the dispatcher is at lunch, at meetings or in training. The CSRs do not substitute for any other classification, although one CSR was assigned to work with the engineer for a six-month period in 1999 to prepare print drawings during the installation of a line equipment system. All of the office employees, including the engineer, CO tech, and dispatcher can or have filled in for the CSR employees while the CSR employees are in training, which occurs three to four times per year and lasts for as little as one-half hour, but may be as long as one full day.

All employees work Monday through Friday, 8:00 a.m. to 4:30 p.m. Off-hour emergencies are reported by customers by calling the office and leaving a message on the answering machine. All hourly employees, other than the part-time splicer, work, on a rotating basis, one-week at a time, as the on-call person. Each evening and weekend, the designated on-call employee is expected to call into the office to check for messages.⁷ Should an emergency be reported which warrants immediate repair, the on-call employee is responsible for contacting the appropriate service employee or employees to remedy the situation. While the on-call employee is responsible for contacting off duty employees to perform the necessary repairs, only management may authorize overtime.

The record reveals that employees are permitted to bid on all job vacancies. At one point during the last two years, one unnamed CSR bid on a dispatcher position. The CSR withdrew her bid, although it is not apparent from the record whether she would have qualified

⁷ The record does not reflect in what manner employees are paid when working on-call, or the frequency of such emergency work.

for the position had she not withdrawn the bid. The general manager's testimony indicated that the applicant could not perform the physical aspects of the dispatcher position. The dispatcher position was created approximately five years ago. Prior to that time CSR personnel would field calls from customers and contact outside personnel directly to report work assignments to them. A dispatcher was hired when work volume increased and an employee with field experience was deemed necessary to handle the assignment of work orders.

During the past 12 years, approximately three employees moved between jobs at the facility. These job moves included an I&R employee and a splicer becoming CO techs, and a construction employee becoming an I&R employee. The employer does not have job descriptions for any of the proposed unit positions. None of the potential unit positions require more than a high school education. All employees receive some on-the-job, in-house or external training to perform their duties. The CSR training consists of in-house training by the General Manager on the computer systems employed at the facility.

It is well established that in determining appropriate units for collective-bargaining purposes, the Act requires only that a unit be "appropriate" so as to insure to employees in each case the fullest freedom in exercising the rights guaranteed by the Act. There is nothing in the statute that requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Morand Brothers Beverage Co., et al., 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951) See also Omni International Hotel, 283 NLRB 475 (1987). In addition, the unit sought by the Petitioner is always a relevant consideration, and the Board will first consider the appropriateness of the unit sought by the Petitioner. Overnight Transportation Company, 322 NLRB 723 (1996).

The Board has also maintained the view that systemwide units are optimal in the utility industry, however, this policy has not been followed in all instances. Deposit Telephone Company, Inc., 328 NLRB No. 151 (1999); Tidewater Telephone Company, 181 NLRB 867 (1970). The Board found in Peco Energy Co., 322 NLRB 1974 (1997) "that less than systemwide units may be appropriate where there is no opposing bargaining history, the

proposed unit constitutes a well defined administrative segment of the company's organization, and the unit can be established without undue disturbance to the company's ability to perform its necessary functions." Deposit Telephone, citing Peco, 322 NLRB at 1079 and Baltimore Gas & Electric, 206 NLRB 199, 201 (1973). In the present case the parties stipulated that there is no opposing bargaining history. The record does not reveal any evidence that the Employer's business would be disturbed, unduly or not, if the four CSRs were excluded from the bargaining unit.

That an employer in the utility industry is small in either size or geographic area is only a minor factor in considering whether the employer's entire work force must be contained in a single unit. Deposit Telephone, supra, overruling Red Hook Telephone Co., 168 NLRB 260 (1967) and Fidelity Telephone Co., 221 NLRB 1335 (1976). See also Dinah's Hotel, 295 NLRB 1100 (1989). The absence of a formal distinction between "field" and "in-house" employees does not mandate that the unit be systemwide. Deposit Telephone, supra, fn. 8, citing Tidewater Telephone, supra, 181 NLRB at 867-868 (1970).

In determining the appropriateness of the petitioned-for unit in this case, I conclude, for the reasons set forth below, that the customer service representatives constitute an identifiable and functionally distinct group with common interests distinguishable from the employees sought by the Petitioner in its proposed unit.

The record herein establishes that the employees in the CSR classification are primarily responsible for day-to-day contact with customers, accepting and placing their orders for new or altered service. This contact occurs both by telephone and in person when customers visit the Employer's office. Other in-office employees, including the engineer, CO tech and dispatcher may be called upon to answer customer questions. However this interaction appears to occur as a sporadic rather than as a regular daily function. Further, this interaction primarily involves technical issues within their expertise and beyond the expertise of the CSRs.

The record reflects that the CSRs are the only employees assigned to work in the Employer's commercial office. Other employees either work in the back of the facility or outside

the facility altogether. See The Concord Telephone Company, 248 NLRB 253 (1980). The CSR employees perform all of the secretarial work done in the facility. On cross-examination the Employer's General Manager, Daniel Scoville, referred to them as secretaries. They are responsible for typing information received from customers. Such data entry creates a service order, which is then forwarded via the computer system to the dispatcher. The CSRs regularly maintain records of the inventory system by entering data into the computer system, and in the same way record vehicle cost expenses of out-of-office employees by typing that information into the computer system.

Unlike all other potential unit employees, the CSRs are not directly involved in the actual physical work of the Employer. The construction, I&R, splicers and CO techs all have hands-on duties, in installing and maintaining the lines. The evidence reveals considerable interchange among those categories, in that they regularly, as a normal part of their duties, assist in each other's work. The engineer, inter alia, designs the schematics relied upon by construction personnel in performing their construction projects, and regularly assists in scheduling those projects throughout the year. Similarly, the dispatcher does not merely record service orders, but dispatches personnel to conduct repairs and new installations and is in constant communication with out-of-office personnel to assure that assignments are performed. As part of his job function, he is required to have direct field experience.

All of the employees, other than the CSRs, have such integrated schedules and duties that they must attend daily meetings with each other to discuss the days work. CSRs are not invited to attend these daily meetings. Scoville testified that none of the CSRs are invited to attend these daily meetings because incoming calls from the public may begin simultaneously with the meeting. More tellingly, they are not invited to these meetings because the meetings consist of a discussion of work issues. Scoville testified that "the things that we talk about in our morning meeting has to do with vehicle maintenance, the service orders that are going to be worked that day, any trouble things that are picked up in the field that are reported back by personnel in the field, basically assignments of where the construction crew is going to go, what

jobs they're going to do." While these discussions primarily deal with issues that arose in the field, all other in-house employees are required to attend.

Similarly, the CSR employees are not invited to attend regular safety meetings. In explaining why the CSR employees do not attend, Scoville reasoned that the meetings involve safety issues of importance for field employees, issues such as ladder safety, vehicle driving and dog bites. Unlike the CSR employees, the dispatcher, engineer and CO tech do attend these meetings. The only meetings attended by CSRs are Safety Committee meetings where representatives of the various job classifications meet to discuss office safety issues.

There is some overlapping of duties among the in-house employees. Such overlap consists primarily of the dispatcher, engineer, CO Tech and management taking telephone calls about four times per year when the CSRs are in training. This occurs intermittently, and answering the telephones and speaking with the public regarding making appointments or taking orders for establishing or changing service does not appear to be a regular function of any employees other than the CSRs. Similarly, a CSR will fill in for the dispatcher during his lunch break and while he is on vacation. The Employer's testimony did not reveal what duties these employees perform when filling in for the dispatcher, and it appears that in any event, such work is not a regular or integral part of the CSR duties. Rather, it may consist of no more than taking messages for the dispatcher, and as such would appear to be secretarial in nature.

Moreover, if the interaction between the CSRs and the dispatcher were more pronounced, there is virtually no substantial interaction between the CSRs and any other employee in the proposed bargaining unit. The dispatcher has more regular functional contact with the remainder of the unit, must be familiar with all aspects of the job duties performed by those other unit employees, is in regular and constant contact with those employees throughout the day, and attends all daily work meetings with those employees. Thus the dispatcher would appear to be appropriately placed in a unit with the CO tech, engineer and outside personnel.

Considering the lack of regular integration of the CSR employees with the remainder of the proposed unit and the functional differences in their job duties, it does not appear that the

CSRs need be included with the petitioned-for employees in order to form an appropriate unit. Thus, the unit, sought by the Petitioner would appear to be appropriate. See The Concord Telephone Company, supra. I shall thus exclude the CSRs as office clerical employees from the unit found appropriate herein.

The parties also differ as to the placement of part-time splicer Norman Anderson. The evidence reveals that General Manager Scoville requested Anderson's hiring on January 25, 2000, such request was approved on January 31, 2000 and final approval was given on February 29, 2000. Each date occurred prior to the March 16, 2000 demand for recognition by the Union. Anderson was hired to perform cable splicing. He shares identical fringe benefits with other employees in the proposed unit, and is paid \$15 per hour, a sum well within the range of unit wages which range from \$11.40 to \$28.315 per hour. As of the date of hearing, Anderson had worked 41 hours during a three-week period, an average of 13.7 hours per week.

In determining whether on-call or part-time employees who perform unit work should be included in a bargaining unit, the Board considers the regularity of their employment. Employees are considered to have been regularly employed where they have worked a substantial number of hours within the period of their employment prior to the eligibility date. Employees averaging four-hours of work per week during the last quarter prior to the eligibility date have been found to share "a sufficient community of interest for inclusion in the unit." Davison-Paxon Company, 185 NLRB 21, 24 (1970). Where the employee was hired during the quarter prior to the eligibility date and has a reasonable expectation of continued employment, the Board will not artificially divide the employee's hours by the entire 13-week quarter, rather it will consider the actual time worked. See Genesis Health Ventures of West Virginia, 326 NLRB No. 116, fn. 8 (1998) and Pat's Blue Ribbons, 286 NLRB 918, 919 (1987) citing Tawa Brothers Inc., d/b/a Modern Food Market, 246 NLRB 884 (1979). Under these circumstances, it would appear that Anderson is regularly employed in performing the same work as other employees in the proposed unit, receives similar pay and identical benefits, and has averaged over 13 hours

of work per week since he was hired. Thus, I find that Anderson is eligible to vote as a part-time splicer.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time plant personnel employed by the Employer at its Harrisville, West Virginia, facility, including dispatchers, installer and repair employees, central office technicians, construction employees, splicers and engineer; excluding customer service representatives, other office clerical employees, and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁸ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date,

⁸ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁹ Those eligible shall vote whether or not they desire to be represented for collective bargaining by International Brotherhood of Electrical Workers, Local Union 968, AFL-CIO, CLC.

Dated at Pittsburgh, Pennsylvania, this 19th day of April 2000.

/s/ Gerald Kobell

Gerald Kobell
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
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⁹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before April 26, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.